

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ALFONSO MOUZON,

Petitioner,

v.

BEN MCLAIN, Executive Director,

Respondent.

No. C 07-4070 MMC (PR)

**ORDER DENYING REQUEST FOR
CERTIFICATE OF
APPEALABILITY**

(Docket No. 8)

On August 8, 2007, petitioner, a civil detainee confined at Coalinga State Hospital and awaiting civil commitment proceedings, filed the above-titled petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241.¹ On November 29, 2007, the Court dismissed the petition on abstention grounds under the rationale of Younger v. Harris, 401 U.S. 37, 43-46 (1971) (holding federal court should not interfere with ongoing state criminal proceedings absent extraordinary circumstances), and Middlesex County Ethics Comm. v. Garden State Bar Ass'n, 457 U.S. 423, 432 (1982) (finding policies underlying Younger abstention fully applicable to noncriminal judicial proceedings when important state interests involved and state proceedings afford adequate opportunity to raise constitutional claims). The dismissal

¹Petitioner filed his petition on a form for petitions brought pursuant to 28 U.S.C. § 2254, which statute provides habeas corpus jurisdiction over persons held in custody pursuant to the judgment of a state court. See 28 U.S.C. § 2254(a). On August 28, 2007, petitioner filed additional facts and argument in support of the petition; in such additional filing he makes clear that because he is not in custody pursuant to a state court judgment, he is bringing his petition under 28 U.S.C. § 2241(c)(3), which provides habeas corpus jurisdiction over any person held in custody in violation of the Constitution or laws or treaties of the United States. See 28 U.S.C. § 2241(c)(3).

1 was without prejudice to petitioner's filing a new federal habeas petition once his state civil
2 commitment proceedings are completed and he has exhausted state court remedies
3 concerning all claims he wishes to raise in federal court.

4 On December 12, 2007, petitioner filed a notice of appeal, which the Court construes
5 as including a request for a certificate of appealability ("COA") pursuant to 28 U.S.C.
6 § 2253(c) and Federal Rule of Appellate Procedure 22(b). See United States v. Asrar, 116
7 F.3d 1268, 1270 (9th Cir. 1997). It is an open question in the Ninth Circuit whether a state
8 pretrial detainee who files a habeas petition under § 2241 must obtain a COA in order to
9 appeal. See McNeely v. Blanas, 336 F.3d 822, 832 n.10 (9th Cir 2003). However, other
10 circuits have held that such petitioners must obtain a COA. See id. Assuming a COA is
11 required in this case, petitioner's request for a COA will be denied. Petitioner has not
12 demonstrated that "jurists of reason would find it debatable whether the petition states a valid
13 claim of the denial of a constitutional right and that jurists of reason would find it debatable
14 whether the district court was correct in its procedural ruling." Slack v. McDaniel, 529 U.S.
15 473, 484 (2000).


16 Accordingly, the request for a certificate of appealability is hereby DENIED.

17 The Clerk shall forward this order, along with the case file, to the United States Court
18 of Appeals for the Ninth Circuit, from which petitioner also may seek a COA. See Asrar,
19 116 F.3d at 1270.

20 This order terminates Docket No. 8.

21 IT IS SO ORDERED.

22 DATED: January 2, 2008

23 
MAXINE M. CHESNEY
24 United States District Judge
25
26
27
28